HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Friday, April 26, 2013
83rd Legislature, Number 60
The House convenes at 10 a.m.

Fourteen bills are on the daily calendar for second-reading consideration today. They are analyzed in today's *Daily Floor Report* and are listed on the following page.

The following House committees had formal meetings scheduled for 9 a.m.: Select Committee on Criminal Procedure Reform in Room 1W.14 (Agricultural Museum) and Natural Resources in Room 1W.14 (Agricultural Museum).

The following House committees had formal meetings scheduled for 9:30 a.m.: Criminal Jurisprudence in Room 3W.9 and Special Purpose Districts in Room 1W.14 (Agricultural Museum).

The Homeland Security and Public Safety Committee had a formal meeting scheduled for 9:45 a.m in Room 3W.15.

Bill Callegari
Chairman
83(R) – 60

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Friday, April 26, 2013
83rd Legislature, Number 60

SUBJECT: Supplemental appropriations and reductions for fiscal 2013

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 27 ayes — Pitts, Sylvester Turner, Ashby, Bell, G. Bonnen, Carter, Crownover, Darby, S. Davis, Dukes, Giddings, Gonzales, Howard, Hughes, S. King, Longoria, Márquez, McClendon, Muñoz, Orr, Otto, Patrick, Perry, Price, Raney, Ratliff, Zerwas

0 nays

WITNESSES: For — None

Against — None

On — Carter Smith, Parks & Wildlife Department; (*Registered, but did not testify:* Steve Alderman, University of Texas Medical Branch; James Bass, Texas Department of Transportation; Cindy Brown, Department of Family and Protective Services; Kirk Cole, Department of State Health Services; Shyra Darr, Texas Facilities Commission; Liz Day, TCEQ; Robby DeWitt, Texas A&M Forest Service; James Douglas, Texas Southern University; Nim Kidd, Texas Department of Public Safety-TDEM; David Kinsey and Greta Rymal, Health and Human Services Commission; Paul Morris, Department of Family and Protective Services; Glenn Neal, Department of Assistive and Rehabilitative Services; Chip Osborne and Thomas Palladino, Texas Veterans Commission; Billy Parker, Texas A&M Engineering Extension Service; Milton Rister, Railroad Commission; Amanda Rockow, The University of Texas at Dallas; Edward Seidenberg, Texas State Library & Archives Commission)

DIGEST: CSHB would appropriate a total of $874.9 million in all funds for fiscal 2013, including $506.7 million in general revenue funds, $194.2 million in general revenue dedicated funds, and $174.1 million in economic stabilization (Rainy Day) funds.

Reductions and Appropriations in CSHB 1025

	Reductions	Appropriations	Net Total
General revenue funds	$ (158,247,725)	$ 664,898,843	$ 506,651,118
General revenue dedicated	(12,500)	194,211,989	194,199,489
Other funds*	-	174,056,151	174,056,151
Federal funds	-	-	-
All funds total	$ (158,260,225)	$ 1,033,166,983	$ 874,906,758

* Economic Stabilization Fund

Source: Legislative Budget Board fiscal note

Reductions

CSHB 1025 would reduce appropriations by a total of $158.2 million in general revenue funds and $12,500 in general revenue dedicated funds. This would include a $110 million reduction in general revenue funds appropriated to the Texas Department of Transportation (TxDOT) and a $22.6 million reduction to the Texas Public Finance Authority (TPFA) to pay debt service on bonds.

General Government

The bill would appropriate $7.5 million in general revenue funds to pay salaries for district judges and prosecuting attorneys. An additional $475,000 would be appropriated primarily to cover costs of juror pay and indigent inmate defense.

The Veterans Commission would receive $1.5 million in general revenue funds to hire up to an additional 16 FTEs to address a backlog of claims and to hire additional counselors for hospitals and clinics. An additional $500,000 would be included for the purpose of repaying a deficiency grant made under a specific provision in the law.

The bill would appropriate $1.4 million in general revenue funds to the Facilities Commission to pay costs incurred as a result of an increase in utility rates.

Health and Human Services

The bill would appropriate $170 million out of general revenue dedicated funds to the Department of State Health Services (DSHS) so it could enter into an interagency contract to transfer the funds to the Health and Human Services Commission (HHSC) for the non-federal share of the Medicaid disproportionate share hospital program.

The bill also would repeal a rider in the 2012-13 budget that allows the HHSC to seek funding from the most effective type of financing to fund debt from the Texas Integrated Eligibility Resign Systems (TIERS). The rider allows HHSC to transfer $4.2 million to the Texas Public Finance Authority to pay debt service on the TIERS benefit portal.

Public Education

The bill would add $500 million in general revenue funds to the Foundation School Program for the current school year. The money would be distributed in an equal amount per student in weighted average daily attendance (WADA) to school districts and open-enrollment charter schools, with per-student amounts not to exceed $72.50 per WADA.

The bill also would appropriate $517,000 for a projected shortfall between contract and budgeted amounts for the Texas Education Agency (TEA) data center operations.

Higher Education

Hazlewood Reimbursements. CSHB 1025 would provide a partial reimbursement to institutions of higher education for the cost of providing veterans and certain family members free tuition. The bill would appropriate $30 million in general revenue directly to general academic institutions and health-related institutions as well as junior colleges and community colleges that provided veterans and certain family members an exemption on tuition and certain fees in 2012 under the state's Hazlewood Act.

Graduate Medical Education. CSHB 1025 would appropriate $17 million in general revenue to the Texas Higher Education Coordinating Board for graduate medical education. The bill would require that portions of this

appropriation be awarded as grants to:

- plan new GME programs;
- help fill existing but unfilled first-year residency positions; and
- expand existing GME programs or expand new programs to provide support for first-year residency positions.

Texas Research Incentive Program. The bill would appropriate an additional $34.5 million in general revenue funds to the coordinating board for the Texas Research Incentive Program. The program is to be used to match donations raised by institutions of higher education according to a sliding scale.

Other provisions. HB 1026 would appropriate $200,000 for workers' compensation claims to the University of Houston - Clear Lake and $162,500 to the Texas A&M AgriLife Research for current operations. Under the bill, the Texas A&M Engineering Extension Service would receive $1.7 million in general revenue funds to reimburse the agency for state-directed deployments for natural disasters.

Criminal Justice

Correctional managed health care. The Texas Department of Criminal Justice (TDCJ) would receive $39 million in general revenue funds for correctional managed health care for adult offenders.

Jones County correctional facility. CSHB 1025 would appropriate $19.5 million in general revenue to TDCJ for the purchase of the Jones County Correctional Facility. The funds could not be used for any other purpose without the prior approval of the Legislative Budget Board (LBB).

Wildfires

Several agencies would receive appropriations from the Rainy Day Fund for costs they incurred for fire response and fire damage, including:

- *Texas A&M Forest Service* - $161.1 million for reimbursement of costs incurred fighting wildfires;
- *Texas Parks and Wildlife Department (TPWD)* - $4.9 million to replace infrastructure and equipment at Bastrop State Park and the

Bastrop regional park office, as well as habitat restoration and erosion control;

- *Trusteed Programs within the Office of the Governor: disaster recovery* - $4.4 million for infrastructure repair and rehabilitation and hazard mitigation in Bastrop County, and no more than $1 million to reimburse local responders in Cass County, restricted for use on private property and to maximize federal funds; and
- *Department of Public Safety (DPS)* - $2.7 million to repay the agency for costs incurred for fighting wildfires.

Natural Resources

Elephant Butte litigation expenses. The Texas Commission on Environmental Quality (TCEQ) would receive $500,000 in general revenue dedicated funds for litigation expenses related to Elephant Butte.

TPWD - restoration and maintenance of Cedar Bayou. The Texas Parks and Wildlife Department (TPWD) would receive $7 million in general revenue dedicated funds for the Cedar Bayou restoration project.

Other provisions. The Texas Department of Agriculture would receive an additional $10 million in general revenue funds for sourcing healthy food by Texas food banks for distribution in food deserts and other underserved communities.

CSHB 1025 would provide the Railroad Commission $16.7 million in general revenue dedicated funds and an additional 11 FTEs to modernize their permitting program. TWPD would receive an additional $889,000 for state park operations as a result of a revenue shortfall.

Other Provisions

In order to maximize balances, payment for benefits in the bill would have to be proportional to the source of the funds, except for payments for higher education employees group insurance contributions for public community or junior colleges. With certain exceptions, the funds could not be used to pay employee benefit costs if salaries or wages were not paid with general revenue. Each agency receiving funding through the bill would have to file a report demonstrating proportionality.

Effective Date

The bill would take effect immediately. Appropriations from the Economic Stabilization Fund require a vote of two-thirds of the members present in each house of the Legislature.

SUPPORTERS SAY:

CSHB 1025 would balance needed supplemental appropriations in some areas of the state budget with reductions in others to meet the state's budget needs for the rest of the current fiscal biennium, which ends on August 31. The bill appropriately would use $174.1 million in Rainy Day funds to pay for emergency expenses resulting from one-time events such as natural disasters and fire response.

Reductions

CSHB 1025 would reduce appropriations to agencies that are projected to have unspent balances at the end of fiscal 2013. The bulk of these reductions, $110 million to TxDOT and $22.6 million to TPFA, are for payments on outstanding debt that were not necessary.

Health and Human Services

CSHB 1025 would appropriate funds from the general revenue dedicated Trauma Facility and EMS Account for the Medicaid disproportionate share hospital program. The appropriation, which would be an authorized use of the trauma and EMS account, would provide the state match for private and smaller hospitals that absorb a minimum level of costs from care of low-income and indigent patients.

Public Education

Supplemental funding for public schools is a good-faith effort that would show legislators are serious about improving education funding this session instead of waiting for the Texas Supreme Court to rule on a pending school finance lawsuit. A district judge in Travis County has ruled that the state is violating the Texas Constitution by failing to provide an adequate level of funding, and the state is expected to appeal.

The additional $500 million also would lessen the impact of the fiscal 2012-13 budget cuts that came at the same time the state was increasing standards through the new State of Texas Assessments of Academic

Readiness (STAAR). The push for this extra funding came from legislators who wanted school districts to be able to use it over the summer to provide tutoring and other programs for students who fail the STAAR exams being administered this spring. The bill would allow districts to begin planning those efforts.

CSHB 1025 would treat districts fairly by distributing the supplemental funding on a per-student basis. This is in contrast to additional funding in CSHB 1 that would add only a small amount to some property-wealthy districts and larger amounts to less wealthy districts.

Higher Education

Hazlewood reimbursement. This one-time, $30 million appropriation would relieve many of the public universities and colleges of a growing financial burden placed on them by a well-meaning but flawed expansion of the state benefit during the 81st Legislature.

The expansion of the benefit through passage of the Hazlewood Legacy Act allows an exemption on tuition and fees for certain children of veterans. The benefit cost higher education institutions about $110 million in fiscal 2012; most of that cost was due to revenue losses from providing the Hazlewood Legacy Act benefit. The appropriation would be distributed to each participating institution and would be based on the proportionate cost each reported in 2012. At $2.5 million, The Texas State University - San Marcos would receive the largest appropriation for providing the Hazlewood benefit to students in 2012, while The University of Texas M.D. Anderson Cancer Center would draw the smallest appropriation at $2,784.

Graduate medical education. Funding for graduate medical education (GME) helps defray the costs hospitals and other health providers incur for training and supervising doctors who have completed their undergraduate medical education and are now completing their graduate residency programs.

The state subsidizes GME slots because it is expensive for health-related institutions to both train and supervise residents. Because most doctors practice where they completed their residencies, if the state wishes to attract and retain more doctors, it should increase funding to existing GME slots and increase the total number of residency slots.

Criminal Justice

Correctional managed health care. TDCJ needs $39 million to pay the university providers of adult inmate health care for expenses that they have incurred or expect to incur in fiscal 2013. The increased expenses are due to an aging prison population, the rising cost of health care, shortages in health care professionals, and evolving standards of care.

Jones County correctional facility. As a provision for the future, the Legislature should provide $19.5 million to TDCJ to purchase the Jones County Detention Center, a 1,100-bed unit, and then hold it for future needs. The facility was built in anticipation of housing state prisoners but was never used for that purpose. As the Legislature considers closing older, inefficient, and expensive-to-operate units, the Jones County facility could quickly could be put into service if needed, either because another facility should be replaced or because the adult offender population had increased, as it is projected to do over the next five years.

Wildfires

The 2011 wildfire season was particularly devastating, with severe damage in many parts of the state. Because fires and other natural disasters are unpredictable events, they generally are paid for with supplemental appropriations after the costs of containment and restoration have been incurred.

The supplemental funding in CSHB 1025 would reimburse DPS, the Texas Forest Service, and other agencies for their response to the fires. Bastrop State Park and the Bastrop regional park office were devastated by the fire that raged through that area. Funds in the bill would replace infrastructure and equipment at those facilities, as well as assist in habitat restoration and erosion control.

Natural Resources

Elephant Butte litigation. TCEQ would receive $500,000 in general revenue dedicated water fee account funds for litigation expenses in a water rights dispute with New Mexico over Rio Grande River water rights. Due to efforts made by New Mexico to reduce water deliveries to Texas users from Elephant Butte Reservoir, the State of Texas has filed suit with

the U. S. Supreme Court in order to protect Texas' rights by forcing New Mexico to abide by the Rio Grande River Compact Agreement. TCEQ is contracting for legal counsel, which amounts to an estimated $1.5 million in legal expenses related to resolving the dispute in fiscal year 2013.

New Mexico's apparent violation of the Rio Grande River Compact Agreement continues to adversely impact the water supplies of Texas. Legal and technical experts have been retained to ensure the protection of Texas' water supplies. The House-engrossed version of SB 1 would provide $5 million for legal expenses and experts. The supplemental funds could provide additional funding if needed.

*Railroad Commission information technology modernization***.** An antiquated system is holding back the progress of an industry that is one of the state's major economic drivers. There are many outdated manual processes that could be updated to obtain efficiency. For example, the agency is 14,000 completion reports behind, which has resulted in a six-month backlog of issuing completion reports that are submitted by the operator once the well is drilled and ready for production. Currently, all of the information in the 37-page report has to be manually entered by keystroke rather than quickly scanned. Each page of the report takes up to five minutes to load, so only a handful of reports are being processed per person each day.

The agency also is having to lock the public out of their online system for several hours a day because the system cannot handle the load of agency and public use. Those hours of the day that the public is locked out are spent manually entering reports and permits.The Railroad Commission needs a permitting program that can keep up with demand.

Cedar Bayou. Funding for this project would sustain one of Texas' fastest-growing, economically robust communities. Several decades ago, the state took emergency action to plug Cedar Bayou to protect marine life and whooping cranes at the Aransas National Wildlife Refuge from an oil spill. Restoring the valuable hydrological connection between the Gulf of Mexico and Mesquite Bay and other bays in the mid-coastal Rockport area is essential to the productivity of the ecosystem and would promote recreation and tourism. When re-opened, Cedar Bayou will be the only connection through the barrier island system for almost 76 miles between Pass Cavallo and Aransas Pass.

Access to Healthy Food Grant Program. The Texas Department of Agriculture would receive an additional $10 million in general revenue for sourcing healthy food by Texas Food banks for distribution in food deserts and other underserved communities.

Without this funding, there would be less nutritious food available for those Texans that are food insecure and rely on the food banks to feed their families. Access to healthy foods also would help prevent illnesses such as diabetes and childhood obesity, which can be a drain on the state's Medicaid program.

OPPONENTS SAY:

CSHB 1025 would make a number of unnecessary appropriations, and unfortunately would choose to spend Rainy Day funds in areas where general revenue funds would suffice. Most of the appropriations in the bill appear on agency wish lists and are not baseline, necessary funding items. The Legislature already funded most of the true emergency needs when it enacted HB 10 by Pitts earlier this session.

The only necessary appropriations the bill would make are those related to fire containment and relief. These are unavoidable, emergency costs that cannot be predicted and represent the proper use of supplemental funds. Other proposed expenditures, such as those for health and human services, education, criminal justice, and natural resources are not necessary, by many measures, and are certainly not time-critical or of an emergency nature. These priorities should not be funded with supplemental appropriations but should compete for funding, along with other priorities, in the general appropriations act for fiscal 2014-15.

The bill improperly would appropriate $174.1 million from the Rainy Day fund. While the purpose of the Rainy Day fund appropriations is sound — fire containment and relief — it is not necessary to use this particular funding mechanism. The Legislature should use general revenue funds, as it has in supplemental appropriations bills enacted in 2009 and 2011. Rainy Day funds should be conserved for times of proven need or to finance tax relief.

Public Education

The Legislature should not put more money into a school finance system that has been ruled unconstitutional by a district court judge. It would be better to set the money aside until the Texas Supreme Court rules on the

expected appeal. Another option would be to use the funds for another state need, such as transportation.

Higher Education

Hazlewood reimbursement. Providing the benefit that allows Texas veterans and their children access to higher education is a state legacy that should be preserved by continuing the exemption on tuition and fees at the state's public universities and colleges. A one-time appropriation in CSHB 1025 to reimburse these institutions for a portion of the cost for providing the benefit would yield similar appropriations that are unnecessary and would not address the core problem of adequate funding for higher education institutions. Higher education institutions should continue to educate the state's veterans and their children because it is the right way to reward those who have placed service to country ahead of themselves and their families.

Criminal Justice

Jones County correctional facility. The state should not purchase a new correctional facility at a time when the population of offenders is below state capacity. According to the LBB, the number of offenders incarcerated by the state at the end of fiscal 2014-15 will be about 3,000 fewer that state capacity of 156,942.

Natural Resources

Elephant Butte litigation. Ample funding for litigation expenses in the water rights dispute with New Mexico over water deliveries to Texas from Elephant Butte Reservoir already would be funded in the engrossed version of SB 1. Additional funding in the form of supplemental appropriations for fiscal 2013 is not necessary. Earmarking money for this purpose could divert funds from other core water management functions of the agency.

Cedar Bayou restoration project. Appropriating $7 million for the Cedar Bayou restoration project to unplug a barrier created several decades ago to protect the bays from the oil spill would be an unnecessary use of state funds. State money would be better spent on other, more critical projects, especially because previous attempts to reopen the bayou have failed.

OTHER OPPONENTS SAY:

School districts are limited in how they can use the $500 million supplemental funding because it is one-time money and the school year is nearly over. For example, a district would not be able to use the money for ongoing expenses such as hiring teachers. Many districts likely would use the money for tutoring and extra instruction to help students who fail this spring's administration of the STAAR tests. The funds would be distributed on a per-student basis to all districts even though some districts will have a greater percentage of students who need help passing the exams.

NOTES:

The LBB fiscal note estimates the bill would have a negative impact of $506.7 million on general revenue funds through fiscal 2015.

CSHB 1025 differs from HB 1025 as introduced in that the committee substitute would change the method of finance for appropriations related to wildfires from general revenue funds to Rainy Day funds. The substitute deleted provisions in the original that would have reduced appropriations to community colleges by $86.7 million. It also added a number of provisions, including:

- $500 million in additional funds for public education;
- $170 million for the Medicaid disproportionate share hospital program;
- $34.5 million for the Texas Research Incentive Program;
- $30 million for higher education institutions for the Hazlewood Exemption;
- $19.5 million of the Jones County Correctional Facility;
- $17 million for graduate medical education expansion;
- $10 million for the Access to Healthy Foods Program; and
- reductions of $110 million in general revenue funds to TxDOT for general obligation bond debt service.

SUBJECT: Constitutionally allowing cities to decide how to fill vacant elected seats

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 4 ayes — Dutton, Alvarado, Elkins, J. Rodriguez

2 nays — Leach, Sanford

1 absent — Anchia

WITNESSES: For — (*Registered, but did not testify:* Scott Houston, Texas Municipal League; Matt Ruszczak, Greater Mission Chamber of Commerce)

Against — None

BACKGROUND: Section 11, Article XI of the Texas Constitution prohibits a city with terms of office between two and four years from filling vacancies by appointment. Instead, cities must fill vacancies by majority vote during a special election held within 120 days after the start of the vacancy.

Home-rule municipalities have a population of more than 5,000 and have adopted a home-rule charter.

DIGEST: HJR 87 would propose an amendment to allow a home-rule city to specify through its charter the procedure to fill a vacancy in city government that had an unexpired term of 24 months or less.

The proposal would be presented to the voters at an election on Tuesday, November 5, 2013. The ballot proposal would read: "The constitutional amendment authorizing a home-rule municipality to provide in its charter the procedure to fill a vacancy on its governing body for which the unexpired term is 24 months or less."

SUPPORTERS SAY: HJR 87 would cut taxpayer costs while preserving accountability by allowing citizens of home-rule cities to have the power to decide through their charter how to fill a short-term vacancy in city elected office. Under current law, when an elected official passes away or otherwise leaves office, the Constitution requires cities to hold a special election to fill the seat within 120 days, even if only a few months remain in the term.

Taxpayers unnecessarily pay tens of thousands of dollars to hold special elections only a few months before a regular election. A number of Texas' roughly 360 home-rule cities have already voted to amend their charters to allow appointment as a way to fill short-term vacancies, but the Constitution prohibits them from implementing those amendments.

An affirmative vote on HJR 87 would simply allow citizens of Texas' hundreds of home-rule cities to decide through their charters how they wanted to fill vacancies. HJR 87 would preserve democratic accountability, as cities still would have to hold elections as usual after the expiration of an appointed official's term.

OPPONENTS SAY:

The Constitution should not be altered to allow a home-rule city to specify through its charter the procedure to fill certain vacancies in city government with unexpired terms. Voting and elections are essential functions of government and the best way to ensure democratic accountability. HJR 87 could increase the opportunity for corruption in local government by allowing city officials to appoint one another. The cost of special elections is a small price to pay to ensure accountability.

NOTES:

According to the Legislative Budget Board, the state would pay $108,921 to publish the resolution.

HB 1372, the enabling legislation for HJR 87, would allow home-rule cities to choose a different procedure than provided for in the Constitution for filling a city government vacancy of 24 months. It is set for the House General State Calendar on April 30.

SUBJECT: Removing term limits for housing authority tenant commissioners

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 5 ayes — Alvarado, Elkins, Leach, J. Rodriguez, Sanford

0 nays

2 absent — Dutton, Anchia

WITNESSES: For — Carl Richie, Housing Authority for the City of Austin

Against — Emily Rickers, Alliance for Texas Families

On — None

BACKGROUND: Local Government Code, sec. 392.0331 requires a municipality with a municipal housing authority composed of five commissioners to appoint at least one who is a tenant of a public housing project over which the authority has jurisdiction. An authority with at least seven commissioners must appoint at least two who are tenants. A municipality does not have to appoint a tenant commissioner to a municipal housing authority if it has 150 units or fewer and the municipality cannot fill the position with an eligible tenant within 60 days of a vacancy after timely notice.

A county must appoint at least one commissioner to a county housing authority who is a tenant of a public housing project over which it has jurisdiction. A regional housing authority must have at least one appointed tenant commissioner. A county or regional housing authority with up to 750 units is exempt from appointing tenant commissioners.

A tenant commissioner on a municipal, county, or regional housing authority board may not serve more than two consecutive two-year terms. Tenant commissioners for municipal housing authorities overseeing up to 150 units are exempt from this term limit.

DIGEST: HB 654 would eliminate the term limit of two consecutive two-year terms for a tenant of a public housing project who served as a commissioner on the board of a municipal, county, or regional housing authority. The bill

would apply to commissioners appointed before, on, or after the effective date of the bill.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

HB 654 would give tenant commissioners parity with their colleagues who are not bound by term limits. Tenant commissioners invest time learning about the housing industry and housing authority issues. The board of commissioners loses this institutional knowledge each time a tenant commissioner leaves office. By allowing tenant commissioners to serve more than two terms, HB 654 would improve board efficiency and efficacy by allowing tenant commissioners to stay on the board and use the knowledge they gained during their service to better represent the interests of other tenants.

HB 654 would preserve democratic accountability for all commissioners and would guard against corruption. Texas statute allows any commissioner to be removed at any time for inefficiency, neglect of duty, or misconduct in office. Under HB 654, tenant commissioners would be held to the same high standard as their colleagues.

If other tenants had concerns about the performance of the tenant commissioner, they could voice their concerns to the mayor or commissioners court, who could remove the commissioner from office. Many Texas cities have term limits for city council and the commissioners court, which would help ensure that a corrupt commissioner did not stay in office because of corruption in city government.

OPPONENTS SAY:

HB 654 could create an opportunity for corruption with the same tenant staying on the board indefinitely and with little accountability.

While it is important for tenants to be represented on the board of the housing authority that governs the housing project in which they live, retaining a term limit for these tenant commissioners would better guard against inefficiency, neglect of duty, or misconduct and ensure other tenants had an opportunity to serve. Current law provides a more democratic process and allows a steady rotation of tenants to serve on a housing authority's board. This gives more tenants a voice if they believe the tenant commissioner is not competently representing their interests.

SUBJECT: Requiring CPR and automatic external defibrillator instruction in schools

COMMITTEE: Public Education — committee substitute recommended

VOTE: 10 ayes — Aycock, Allen, J. Davis, Deshotel, Dutton, Farney, Huberty, K. King, J. Rodriguez, Villarreal

1 nay — Ratliff

WITNESSES: For — Pamela Akins, Texas Council on Cardiovascular Disease and Stroke; Matt Nader, American Heart Association; Rachel Naylor, American Heart Association; Jason Pack, ESD 11 and Travis County Firefighter Association; Ellen Pringle, American Heart Association (*Registered, but did not testify*: Laura Blanke, Texas Pediatric Society; Marissa Rathbone, ACTIVE Life; Clayton Stewart, Texas Society of Anesthesiologists)

Against — Amy Hedtke, Red Oak Home Schoolers of Texas; Read King; Julie Shields, Texas Association of School Boards; Ben Snodgrass, Texas Home School Coalition; (*Registered, but did not testify*: Diane Cox, Texas Association of School Boards; Paul Hastings; Chris Howe; David Huber; Casey McCreary, Texas Association of School Administrators; Don Stroud; Maria Whitsett, Texas School Alliance)

On — (*Registered, but did not testify*: David Anderson and Monica Martinez, Texas Education Agency)

BACKGROUND: Under Education Code, sec. 28.0023, the State Board of Education by rule must include instruction in cardiopulmonary resuscitation (CPR) and the use of an automated external defibrillator (AED) as part of the essential knowledge and skills of the health curriculum. A private school is exempt unless the school receives an automated external defibrillator from the Texas Education Agency (TEA) or receives funding from the agency to buy or lease an automated external defibrillator.

DIGEST: CSHB 897 would require the State Board of Education to mandate CPR and AED instruction for grade students in grades 7 to 12. School districts or open-enrollment charter schools would be required to provide the

training. The information could be part of any course. Each student would have to receive training at least once before graduation, but a school administrator could waive the requirement for a student with a disability.

The CPR and AED training would have to include training developed by the American Heart Association or the American Red Cross or use nationally recognized, evidence-based guidelines for emergency cardiovascular care that incorporate psychomotor skills (hands-on practice). The school could use emergency responders, representatives of the American Heart Association or the American Red Cross, school employees, or other qualified individuals to provide the instruction.

Students would not have to become CPR/AED certified, but schools intending to certify students would need to use authorized instructors from the American Heart Association, the American Red Cross, or a similar nationally recognized organization.

These requirements would begin with the 2014-2015 school year.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 897 would help save lives by dramatically increasing the number of individuals who could perform CPR and use an automatic external defibrillator (AED). Each year, more than 350,000 people suffer out-of-hospital cardiac arrests, and early bystander intervention can double or triple a victim's chance of survival. By requiring students to complete CPR/AED training before graduation, this bill would ensure that many more bystanders were armed with lifesaving knowledge.

It would not be necessary for schools to offer full, multi-hour courses resulting in certification. New CPR/AED techniques are easy to learn, do not require instruction on mouth-to-mouth resuscitation, and can effectively be taught in about 30 minutes, making the training both safe and efficient.

The bill would not create an unfunded mandate. Some of the cost estimates for the bill may be too high if they assume school districts would need to train instructors and purchase equipment. Many organizations already have instructors and equipment, including the American Heart

Association, the American Red Cross, and emergency responder groups. Representatives of these groups could conduct both student CPR/AED classes and "train the trainer" courses for school employees. These resources could help school districts implement the training requirements in a timely, cost-effective manner.

Moreover, the training requirements would not be unprecedented – many school districts already incorporate the information into their curricula, and 36 states already require school CPR training.

OPPONENTS SAY

CSHB 897 would create an unfunded mandate. By requiring schools to teach CPR/AED skills, this bill would place onerous and costly burdens on school districts, especially ones with large student populations. According to one estimate, it would cost about $100,000 per year to train about 2,400 students. This issue is best decided on the local level, allowing school boards and parents to determine how to allocate scarce resources.

OTHER OPPONENTS SAY:

If schools were to CPR/AED training, they should require students to become fully certified, even if this limits the number of students who complete the course. It would be better to have fewer students with complete skill sets than more students with potentially inadequate knowledge.

NOTES:

The committee substitute differs from the bill as filed by removing the requirement that private schools conduct CPR/AED training and allowing the information to be taught in any course.

The companion bill, SB 261 by Hinojosa, was referred to the Senate Education Committee on January 29.

SUBJECT: Relating to chargebacks for unemployment compensation benefits

COMMITTEE: Economic and Small Business Development — committee substitute recommended

VOTE: 8 ayes — J. Davis, Vo, Bell, Isaac, Murphy, Perez, E. Rodriguez, Workman

0 nays

1 absent — Y. Davis

WITNESSES: For — Barbara Domel; (*Registered, but did not testify*: Kathy Barber, NFIB Texas; Cathy Dewitt, Texas Association of Business)

Against — None

On — Chuck Ross, Texas Workforce Commission

BACKGROUND: Labor Code, ch. 204 governs the Texas unemployment compensation contribution system. Sec. 204.021 says benefits paid to a claimant are charged to the account of the claimant's former employer. An employer's unemployment compensation rate is calculated based on the history of unemployment claims against the employer. Benefits paid to a claimant are counted as "chargebacks" against the employer's account. An employer's premiums rise if a former employee receives benefits from the unemployment compensation fund. A claim filed against an employer remains on the employer's account for three years.

Sec. 204.022(a) allows employers to be exempted from the chargeback system if a former employee claims unemployment benefits. This may occur in specified situations when the separation from employment was not due to the fault of the employer, such as in the event of a natural disaster. Chargebacks are not posted on those employers' accounts. Added costs of providing unemployment benefits to these claimants is paid by all contributors to the unemployment insurance system.

DIGEST: CSHB 916 would amend Labor Code, sec. 204.022 to add the requirement that a chargeback not be posted to an employer's account for benefits paid

to an employee who continued to work his or her customary hours for the employer when the employee's benefit year began. This provision would not apply to unemployment benefits claims made under the shared work unemployment compensation program,.

The bill would take effect on September 1, 2013, and would apply only to unemployment compensation claims filed on or after that date.

SUPPORTERS SAY:

This bill would protect an employer from receiving a chargeback for unemployment benefits paid to an employee who continued to work his or her customary hours for that employer when the employee benefits year began.

A situation like this occurred at the beginning of 2010. An individual held two jobs, one full time and one part time, and was laid off by her full-time employer and received unemployment benefits in 2009. After being temporarily laid off from the part-time job at the end of the same year, the person still lacked full-time employment and became eligible for a new unemployment claim in 2010. The Texas Workforce Commission (TWC) had to calculate benefits based on the part-time employer as the most recent employer, so the part-time employer received chargebacks for the 2010 unemployment claim after the employee had resumed part-time employment. The employer paid wages to the reinstated employee and was penalized with an increased unemployment tax rate. According to TWC, this is the only instance in which an employer has experienced a chargeback such as this. The bill would close a loophole in the law and prevent this from happening to another business.

The bill would prevent chargebacks only in narrow situations, where an individual qualified for two consecutive benefit years and was still working for the same employer during the second benefit year for the same pay amount. The protection would not apply to situations involving the shared work unemployment compensation program.

OPPONENTS SAY:

No apparent opposition.

NOTES:

The committee substitute differs from the filed bill by specifying that it would not apply to situations in which an employer used the shared work unemployment compensation program and by removing a requirement for TWC to track hourly wage records for individuals partially employed.

SUBJECT: Administration of a high school equivalency examination

COMMITTEE: Public Education — committee substitute recommended

VOTE: 9 ayes — Aycock, Allen, Deshotel, Dutton, Farney, Huberty, K. King, Ratliff, J. Rodriguez

0 nays

2 absent — J. Davis, Villarreal

WITNESSES: For — Julie Baker, James Odom, and Ellen Savoy, Harris County Juvenile Probation Department; Howell Wright, Rockdale ISD, Texas Association of Community Schools, Texas Association of Mid-size Schools; (*Registered, but did not testify:* Yannis Banks, Texas NAACP; Portia Bosse, Texas State Teachers Association; Monty Exter, Association of Texas Professional Educators; Diane Hubbell, Harris County Juvenile Probation; Amanda Jones, Harris County Office of Legislative Relations; Casey McCreary, Texas Association of School Administrators; Nelson Salinas, Texas Association of Business; Julie Shields, Texas Association of School Boards; Maria Whitsett, Texas School Alliance)

Against — None

On — (*Registered, but did not testify:* David Anderson and Gina Day, Texas Education Agency; Drew Scherberle, Greater Austin Chamber of Commerce)

BACKGROUND: In 2011, the Legislature passed SB 1094 by Rodriguez, which amended Education Code, sec. 7.111 to grant authority to the State Board of Education (SBOE) to develop and deliver high school equivalency examinations online. The bill required that the rules provide a procedure for verifying the identity of the person taking the examination and prohibit a person under 18 years old from taking the examination online.

The Texas Education Agency said it does not offer high school equivalency examinations online because of concerns about test security. Pursuant to an agreement between SBOE and GED Testing Service, the state in March began allowing individuals to take the General Educational

Development (GED) test on computers at various testing centers. The computer-based tests are different from online tests because they are proctored. Paper-based tests will remain through December 2013.

Title 19 TAC, rule §89.43 sets out certain conditions for applicants under age 18 to apply for a Texas Certificate of High School Equivalency. An applicant who is 17 years old is eligible with parental or guardian consent, or if the applicant is married, has entered military service, has been declared an adult by the court, or who has otherwise legally severed the child/parent relationship. An applicant who is 16 years old may test if recommended by a public agency having supervision or custody under a court order. An applicant who is at least 16 years old may also test if required to take the examination under a justice or municipal court order related to the applicant's failure to attend school; if enrolled in a Job Corps training program; or if enrolled in the adjutant general's department's Seaborne ChalleNGe Corps.

DIGEST:

CSHB 2058 would amend Education Code, sec. 7.111 to allow individuals who were ages 16 or 17 to take the high school equivalency examination under order from any court, rather than only from a justice or municipal court order related to the student's truancy.

The bill would strike the provision prohibiting a person younger than 18 years of age from taking the examination online.

The bill also would eliminate duplicate language concerning 16- and 17-year-olds enrolled in the Seaborne ChalleNGe Corps.

The bill would apply starting with the 2013-14 school year.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 2058 would clarify that students ages 16 or 17 who were under any court order could take high school equivalency examinations and could take them online if that option were available. Recent legislation regarding online testing, as well as TEA’s transition to computer-based testing, has caused some confusion among testing centers that serve the Harris County Juvenile Probation Department about who may take the exam and by what means. Although there is currently no online testing, the Legislature still

should remove the prohibition against students younger than 18 taking the examination online in case that option does become available.

While it is good public policy to encourage students ages 16 and 17 to continue their high school education, as a practical matter many youth who are involved in the juvenile justice system will not be completing high school. Traditional school may not be a good fit for these youth, and getting a GED is their best option.

OPPONENTS SAY:

CSHB 2058 is unnecessary because TEA is not offering high school equivalency exams online. Students ages 16 and 17 who are under supervision by a juvenile probation department could continue to take the tests at authorized testing centers.

NOTES:

The committee substitute differs from the bill as filed in that it would retain current statutory language regarding the authority of a public agency providing supervision or having custody of 16- and 17-year-olds to recommend the high school equivalency examination.

SUBJECT: Establishing qualitative review of major contracts by the state auditor.

COMMITTEE: Government Efficiency and Reform — favorable, without amendment

VOTE: 7 ayes — Harper-Brown, Perry, Capriglione, Stephenson, Taylor, Scott Turner, Vo

0 nays

WITNESSES: For — John Colyandro, Texas Conservative Coalition; (*Registered, but did not testify*: Brent Connett, Texas Conservative Coalition; Leslie Wolfe, Maximus Inc.)

Against — None

On — Lynn Magee, State Auditor's Office; (*Registered, but did not testify*: Adam Jones, Weaver, LLP)

BACKGROUND: Government Code, ch. 321 requires the State Auditor's Office to devise an audit plan for the state each year and recommend the plan to the legislative audit committee. In devising the audit plan, the state auditor is required to perform risk assessments. This is a qualitative and quantitative process of identifying potential risks to the state in the various programs and contracts of state agencies.

DIGEST: HB 2439 would require the state auditor to review at least three major contracts per year as part of the annual audit. The bill would add Government Code, sec. 321.0139 to specify that a state agency contract valued at $1 million or more and providing services to residents of the state would qualify as a major contract. The three or more major contracts reviewed would be identified based on the state auditor's risk assessment. The review of these contracts would be limited to an analysis of the efficiency and effectiveness of each in providing services.

The bill would take effect September 1, 2013, and would apply only to audit plans devised on or after that date.

SUPPORTERS SAY: HB 2439 would include in the annual state audit process qualitative measures focusing on how well contract services were delivered to

Texans. Under current practices, the success of a procurement project is measured based on the ability of the participant in the project to follow all state procurement rules under the erroneous assumption that if all rules and processes are followed, this will ensure that citizens receive the best value. In reality, the success of a procurement project is more dependent on the skills and abilities of employees working on the particular contract and how effectively and efficiently the constituents are served at the end of the contract.

HB 2439 would help to refocus the state and contract professionals on achieving best value with these major contracts by requiring the State Auditor's Office to analyze the efficiency and effectiveness of three or more major contracts per year. By requiring that only three contracts be reviewed annually, the bill would serve as a reasonable first step in the process of placing a greater emphasis on the productivity of a procurement project. This, in turn, would lead to better delivery of necessary public services by state contractors.

In the end, HB 2439 would save taxpayers enough money to more than offset the cost found in the fiscal note. While the Legislative Budget Board (LBB) can estimate how much it would cost to conduct the qualitative review of contracts, data are not yet available to calculate savings stemming from gains in efficiency and effectiveness resulting from the bill. As an example of the amount of money involved in state contracting, the LBB reported that the state had more than 4,500 open contracts worth $1 million dollars or more at the close of fiscal 2010.

OPPONENTS SAY:

The bill would not represent much of a departure from current practice. The State Auditor's Office often audits state contracts in the process of reviewing state agencies each year.

According to the fiscal note, performing the contract reviews required by HB 2439 would cost about $2.4 million in fiscal 2014-15. While the aim of the bill would be commendable, there is no guarantee this investment would prevent enough waste in the state contracting process to recoup these costs or result in actual savings over time.

NOTES:

According to the fiscal note, conducting the contract reviews required by HB 2439 would result in a negative impact of about $2.4 million in fiscal 2014-15 due to costs associated with additional staff — including salaries, travel, and benefits — and other operating expenses.

SUBJECT: Revising regulations for professional employer organizations

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 6 ayes — Oliveira, Bohac, Orr, Villalba, Walle, Workman

0 nays

1 absent — E. Rodriguez

WITNESSES: For — Garry Bradford, Unique HR; Ashley Slania, Insperity; (*Registered, but did not testify:* Victor Alcorta, Insperity; Sabrina Brown, T & T Staff Management, Inc.; Cathy Dewitt, Texas Association of Business; Galt Graydon and Adam Peer, National Association of Professional Employer Organizations; Megan Peters, ADP; William Yarnell, TriNet)

On — (*Registered, but did not testify:* Doug Danzeiser and Nancy Moore, Texas Department of Insurance; Brian Francis, Texas Department of Licensing and Regulation)

BACKGROUND: Labor Code, ch. 91 regulates staff leasing services. The term "staff leasing services company" includes a professional employer organization.

Labor Code, ch. 406 governs workers' compensation insurance coverage. Sec. 406.097, which addresses executive employees, states that a sole proprietor or partner of a covered business entity or a corporate officer with an equity ownership in a covered business entity of at least 25 percent may be excluded from workers' compensation coverage.

Insurance Code, sec. 462.308(a)(2) enables the Texas Property and Casualty Insurance Guaranty Association to collect from an insured employer whose net worth exceeds $50 million the amount of a workers' compensation claim paid by the guaranty association following the impairment of the normal insurer.

DIGEST: CSHB 2763 would make three key changes to statutes regulating professional employment services:

1. changing statutory definitions and terminology in the professional

employment service industry;
2. allowing professional employment organizations to establish a self-funded health benefit plan for their employees; and
3. allowing either party in a professional employment services agreement to be responsible for workers' compensation coverage.

Definition changes. CSHB 2763 would add definitions and change key terminology used in statute regarding the professional employment services industry. Among these changes:

- the term "professional employer organization" (PEO) would replace "staff leasing services company" and could be used only by a staff leasing services license holder;
- "client" would mean a person (company) that entered into a professional employer services agreement with a license holder;
- "co-employment relationship" would mean the agreement between a PEO and a client company, both of which would be defined as "co-employers" and;
- "covered employee" would mean an employee working under both a PEO and a client.

A professional employer service agreement would be a contract arising from a co-employment relationship between the PEO and the client. Each party would have rights and obligations under the agreement and under statute. The client would have sole responsibility for the direction and control of covered employees, as well as any of the goods and services they produced and any of their acts, errors, and omissions.

Workers' compensation. The bill would allow the client or the PEO to obtain workers' compensation insurance coverage for covered employees, where before only the PEO could provide such coverage. The professional employer services agreement, which would be provided to the Texas Department of Insurance (TDI) on request, would specify whether the parties had elected to obtain coverage and, if so, which party was responsible.

If the PEO maintained the coverage, then an executive employee of the client would be treated as an executive employee for the purposes of the workers' compensation policy, as described in Labor Code, sec. 406.097. Under the PEO's workers compensation coverage, the premiums would be based on the experience rating of the client for the first two years the

employees were under the policy. Afterwards, if the client decided to take responsibility for coverage from the PEO, the premium would be based on the lower of the experience modifier of the client before the PEO's coverage or the experience modifier of the license holder when client's coverage under the PEO's coverage ended.

If the client maintained the coverage, the client would be responsible for paying the premiums for covered employees based on the client's experience rating.

In addition to following existing workers' compensation coverage requirements for license holders, either co-employer that elected to maintain coverage under CSHB 2763 would have to:

- notify employees that the employer maintained coverage, and provide notification of any changes in that coverage (Labor Code, sec. 406.005); and
- file reports of on-the-job injury or occupational diseases with TDI's Division of Workers' Compensation (Labor Code, sec. 411.032).

These same new requirements would apply if neither co-employer chose to maintain coverage under the bill.

The client, not the PEO, would be considered the insured employer under Insurance Code, sec. 462.308(a)(2), which would require clients with a net worth greater than $50 million to pay back the amount of a workers' compensation claim to the Texas Property and Casualty Insurance Guaranty Association if the workers' compensation insurer became impaired.

The bill would require the workers' compensation insurer, instead of TDI, to be responsible for providing computations to another prospective workers' compensation insurer of the client.

Self-funded health benefit plan. The bill would extend to PEOs the ability to offer to covered employees either a fully insured welfare benefit plan provided by an authorized insurance company, or a self-funded health benefit plan. For the purposes of sponsoring retirement and benefit plans, CHSB 2763 would consider both the client and the PEO as the employer under state law.

The bill would repeal Labor Code, sec. 91.043, which currently prohibits PEOs from sponsoring a self-funded health benefit plan. A PEO that met other requirements of Labor Code, ch. 91could offer self-funded plans that were not fully insured, with the approval of the insurance commissioner. In the rule-making process to implement these plans, the commissioner would consider rules adopted for similar benefit plans and could not adopt a rule requiring that the co-employers be members of the same trade or industry.

The bill would establish the following requirements for rules adopted to govern PEO self-funded health benefit plans:

- the insurance commissioner would have initial and final approval, the authority to require PEOs to provide forms or other items, and the ability to examine applications or plans;
- the plan would need a fidelity bond and would use an independent actuary and third-party administrator;
- the rules would establish the minimum number of client companies and employees covered by a plan, as well as standards for plan managers and minimum amounts of gross contributions, written commitment, binder, policy for stop-loss insurance, and reserves; and
- TDI could assess a reasonable fee to defray the costs of administration.

The PEO would have to appoint the commissioner of insurance as a resident agent and pay a $50 fee for purposes of service of process.

The commissioner could examine the plan's affairs or access the records, and examine under oath a manager or employee of a PEO regarding the plan.

The Insurer Receivership Act, as well as Insurance Code requirements that govern audits, financial condition, and supervision and conservatorship, would apply to these self-funded health benefit plans. The commissioner could revoke, limit, or suspend authorization of a non-compliant plan.

Other provisions and effective date. CSHB 2763 would repeal statutes that reference an "assigned employee" under a staff leasing services arrangement (Labor Code, sec. 91.001(2) and Tax Code, sec. 171.0001(2)).

Information submitted to TDI under CSHB 2763 regarding a health plan or workers' compensation plan would be confidential and not subject to disclosure.

CSHB 2763 would take effect September 1, 2013, would apply only to professional service agreements entered into on or after that date.

SUPPORTERS SAY:

CSHB 2763 would update and clarify the rights, responsibilities, and duties of parties to a professional employer service agreement.

Definition changes. The bill would update statutory terminology to reflect commonly used terms in the industry today. Not only would this help by extending the law's protection of designated terms for PEOs, it also would clarify the language to ensure that the professional employment industry and regulators alike had a clear grasp of terminology in the law.

Workers' compensation. The bill would allow either the PEO or the client to provide workers' compensation coverage, again giving the professional employment industry the flexibility to tailor its service packages to its clients' needs.

Clients that had to pay back the Texas Property and Casualty Insurance Guaranty Association if their workers' compensation insurer went insolvent would be responsible for the workplace environment in which the employee sustained the injury in the first place. In addition, the guaranty association would collect only from those employers with a net worth greater than $50 million, companies that would be well able to sustain the cost. Additionally, client companies are generally a party to workers' compensation policies held by PEOs and therefore should be held to obligations to the guaranty association. The bill would clarify only which of the two employers would be considered the insured employer in Insurance Code, sec. 462.308(a)(2).

Self-funded health benefit plan. CSHB 2763 would give the PEO industry more flexibility in meeting the requirements of its clients. PEOs would be able to offer self-funded health plans, allowing them to tailor plans to the needs of the covered employees and their clients and enabling them to set the price point and compile a benefits package their customers wanted. The bill would safeguard the plans' participants by applying protections in the Insurance Code to the plans, including provisions

dealing with auditing and examination, financial condition, and insolvency.

In addition, these plans would be overseen by the commissioner of insurance, who would adopt rules using similar benefit plan rules as a guideline and could revoke authorization for plans not meeting TDI standards. As federal changes to health care statutes come into effect, smaller employers in particular could benefit from the ability to seek health care coverage from a PEO.

OPPONENTS SAY:

Workers' compensation. The bill would be unfair to certain clients and to the Texas Property and Casualty Insurance Guaranty Association. The client would bear the responsibility of paying back the guaranty association if its workers' compensation policy insurer became insolvent, even if the client was not the main insured party. Not only that, the guaranty association would be unable to collect from anyone if the PEO was the only party holding the workers' compensation policy.

Self-funded health benefit plan. The state should be careful about extending to a PEO the right to run a self-funded health benefits plan. PEO health benefit plans present a particular risk because they are not subject to all the standards to which a private health insurance company must adhere. Among other provisions, PEO health benefit plans would not have to follow benefit mandates requiring them to cover certain diseases, including serious mental illness, diabetes, and required immunizations, and they would not have to follow prompt-payment requirements. While the bill would direct the commissioner of insurance to adopt rules for these plans comparable to similar benefit plans, the bill leaves ambiguous what would constitute a "similar benefit plan."

NOTES:

In addition to CSHB 2763, the House Business and Industry Committee has recommended an identical committee substitute for the Senate companion, SB 1286 by Williams.

Key provisions that appear in the committee substitute but not in HB 2763 as introduced include:

- requiring certain clients to repay the Texas Property and Casualty Insurance Guaranty Association if the client's workers' compensation insurer was unable to pay a claim due to insolvency;
- directing the commissioner of insurance to consider rules for

similar benefit plans when adopting rules to regulate self-funded health benefit plans offered by PEOs;

- allowing individuals qualifying as executive employees to be designated as such for premium calculation and classification purposes for a workers' compensation policy held by the PEO; and
- changing the definition of executive employee to match the definition in Labor Code, sec. 406.097.

SUBJECT: Prohibiting a surcharge on debit card purchases

COMMITTEE: Investments and Financial Services —favorable, without amendment

VOTE: 7 ayes — Villarreal, Flynn, Anderson, Burkett, Laubenberg, Longoria, Phillips

0 nays

WITNESSES: For — Steve Scurlock, Independent Bankers Association of Texas; (*Registered, but did not testify*: Don Baylor, Center for Public Policy Priorities; John Heasley, Texas Bankers Association; Jeff Huffman, Texas Credit Union League; Emily Rickers, Alliance for Texas Families)

Against — Ronnie Volkening, Texas Retailers Association; (*Registered but did not testify*: Doug Dubois, Jr., Texas Food and Fuel Association)

On — (*Registered, but did not testify*: Leslie Pettijohn, Office of the Consumer Credit Commissioner)

BACKGROUND: Finance Code, sec. 339.001 prohibits a merchant from imposing a surcharge on a buyer who uses a credit card instead of cash, a check, or similar means of payment.

Atty. Gen. Opinion, No. GA-0951, June 18, 2012 found that no statute or constitutional provision prohibits a private retail establishment in Texas from charging an itemized and disclosed "service fee" on a consumer transaction, provided that the fee is not limited to the use of a credit card.

Business and Commerce Code, sec. 502.001 defines a debit card as a device authorizing a designated person to communicate a request to an ATM machine or other terminal or to buy property or services by debit to an account at a financial institution.

Business and Commerce Code, sec. 604.001(1) defines a stored value card as a record that contains a microprocessor chip or magnetic strip that evidences a promise made for money by the seller that goods or services will be provided to the owner in the value shown, that is prefunded, and the value of which is reduced upon redemption. Sec. 604.001(2) includes

in the definition of stored-value card a gift card or gift certificate.

DIGEST:

HB 3068 would prohibit a merchant from charging a customer a surcharge for using a debit card or stored-value card instead of paying with cash, a check, or a credit card. The bill's provision definition of stored-value card would not apply to a gift card or gift certificate.

The bill would not apply to a state agency, county, local governmental entity, or other governmental entity that accepts a debit or stored value card to pay for fees, taxes, or other charges.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

HB 3068 would protect consumers from unfair surcharges, while protecting small banks from potentially discriminatory practices of large banks.

Debit cards were largely unknown in 1985 when the 69th Legislature enacted HB 1558 by Blanton, prohibiting a surcharge for the use of a credit card. HB 3068 would update the law and extend the same protection going forward to consumers using a debit card.

Many low-income consumers prefer to use a debit card to make purchases directly from their checking accounts or do not have access to a credit card. The bill would ensure that this responsible payment method did not incur an additional cost and safeguard continued access to affordable banking for those who need it most.

Recent federal legislation could open the door for large retailers to further steer consumers toward payment devices from their preferred large banks by creating disincentives to use debit cards, which small and community banks issue far more than credit cards. The bill would give debit cards the same standing in Texas as other payment methods, ensure that customers of small banks were treated fairly, and ensure that community banks vital to local businesses remained strong.

OPPONENTS SAY:

HB 3068 is not necessary and would impose unnecessary regulation on Texas businesses. Merchants and retailers in Texas do not place surcharges on debit card transactions, and there have been no reported incidents of such surcharges.

OTHER OPPONENTS SAY:

Interchange fees are one the largest components of the cost of doing business for retailers, and those fees continue to change with federal legislation and court decisions, often increasing. Given the uncertain future of the price of interchange fees, businesses should retain the freedom to charge or not charge a fee for different payment methods in order to operate profitably. The bill would constrain Texas businesses while banks lobby to be able charge higher fees to their commercial customers.

SUBJECT: Use of money in the Railroad Commission's oil and gas cleanup fund

COMMITTEE: Energy Resources — favorable, without amendment

VOTE: 10 ayes — Keffer, Crownover, Canales, Craddick, Dale, P. King, Lozano, Paddie, R. Sheffield, Wu

0 nays

1 absent — Burnam

WITNESSES: For — Cyrus Reed, Lone Star Chapter - Sierra Club; (*Registered but did not testify*: Teddy Carter, TIPRO; David Holt, Permian Basin Petroleum Association; Steve Perry, Chevron USA; Bill Stevens, Texas Alliance of Energy Producers; Sally Velasquez, Frio County)

Against — None

On — David Pollard, Railroad Commission

BACKGROUND: Natural Resources Code, sec. 81.067 establishes the oil and gas regulation and cleanup fund in the general revenue fund of the treasury. Sec. 81.068 states the cleanup fund may be used by the RRC to regulate oil and gas development, including monitoring and inspections, remediation, well plugging, and administrative costs.

Sec. 91.011 requires a well owner or operator to encase a well with steel casing or other material that meets standards adopted by the RRC before drilling into the oil or gas bearing rock, particularly where wells could be subjected to corrosive elements or high pressures and temperatures, to prevent surface or fresh water contamination.

Sec. 91.0115 requires the RRC to issue a letter of determination stating the depth of surface casing required for a well. It allows the commission to charge a fee in an amount determined by the commission, plus up to $75 for processing a request to expedite a letter of determination. The fees charged for expedited letters may be used to study and evaluate electronic access to geologic data and surface casing depths.

HB 2694, enacted in 2011 by the 82nd Legislature, transferred the groundwater advisory unit for the Texas Commission on Environmental Quality (TCEQ) to the Railroad Commission of Texas (RRC). The transfer gave the RRC responsibility for issuing letters of determination related to the depth of surface casing an applicant would need to install to obtain a permit to drill an oil, gas, or disposal well.

DIGEST:

HB 3309 would add fees collected from the RRC's issuance of letters of determination for well casing permits to the sources of funding for the oil and gas regulation and cleanup fund.

It would allow money in the oil and gas cleanup fund to be used to study and evaluate electronic access to geological data and surface casing depths necessary to protect the state's usable groundwater.

HB 3309 would require fees collected from issuing letters of determination, including fees for expedited letters, to be deposited in the oil and gas regulation and cleanup fund.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

HB 3309 would correct a funding error made when the groundwater advisory unit (GWAU) went to the RRC, help the RRC to be self-funding, and give the RRC the resources it needs to protect the state's groundwater from contamination by oil and gas drilling operations.

The GWAU is responsible for protecting Texas' groundwater supplies from drilling operations. When the unit was transferred from the TCEQ to the RRC, the fees it collected to issue letters of determination to well drillers as part of the well drilling permitting process started going into general revenue. The RRC is performing this task, and the bill would ensure that the fee created to fund the activities of the GWAU went toward the intended use, including paying for the nine full-time-equivalent employees that went to the RRC.

The RRC is updating its regulations on casing and cementing of disposal wells and the GWAU plays a key role in this effort. HB 3309 would ensure the proper funding and oversight to make effective regulations that protect the state's fresh groundwater.

Increased funding for the oil and gas regulation and cleanup fund would

improve the state's ability to protect the environment and remediate any effects related to oil and gas exploration. This would help to protect counties from absorbing potential costs related to oil and gas exploration.

OPPONENTS SAY:

HB 3309 would decrease money from general revenue for an activity that the RRC already performs.

NOTES:

The Legislative Budget Board estimates that HB 3309 would have a negative impact of $927,234 to general revenue related funds through the biennium ending August 31, 2015.

SUBJECT: Requiring Sunset review of the Texas Health Care Information Collection

COMMITTEE: Public Health — committee substitute recommended

VOTE: 11 ayes — Kolkhorst, Naishtat, Coleman, Collier, Cortez, S. Davis, Guerra, S. King, Laubenberg, J.D. Sheffield, Zedler

0 nays

WITNESSES: For — Tony German, Texas Ambulatory Surgery Center Society; (*Registered, but did not testify*: Patricia Kolodzey, Texas Medical Association)

Against — (*Registered, but did not testify*: Cathy Dewitt, Texas Association of Business)

On — Nagla Elerian, DSHS; Ken Levine, Sunset Commission; (*Registered, but did not testify*: Cathy Dewitt, Texas Association of Business; Ben Raimer, Texas Institute for Health Care Quality and Efficiency)

BACKGROUND: Health and Safety Code, ch. 108, creates the Texas Health Care Information Council, which operates within the Department of State Health Services (DSHS) and is now known as the Texas Health Care Information Collection (THCIC). This program is required to collect information from hospitals and surgery centers on health care charges, utilization, provider quality, and outcomes to promote cost-effective, high-quality health care.

DIGEST: CSHB 1394 would require the Sunset Advisory Commission to examine the Texas Health Care Information Collection (THCIC) as part of the DSHS Sunset review. The Sunset Advisory Commission would determine whether DSHS, with regard to its administration of the THCIC, was:

- achieving its legislative intent to help consumers make informed health care decisions;
- maintaining appropriate privacy and security standards for patient information; and

- collecting only the patient information necessary for performing its duties.

The Sunset Advisory Commission would need to include its findings in the DSHS Sunset review report. These directives would expire on September 1, 2015 and the THCIC would be abolished on the same date, unless continued in existence after Sunset review.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 1394 would allow the Legislature to thoroughly review and evaluate a particular program within DSHS. The review and evaluation could address whether the THCIC was evading its legislative intent by collecting data that companies and researchers find useful but that average consumers find confusing and unhelpful, as well as whether the program was collecting and selling personal information without informing patients. By directing the Sunset Advisory Commission specifically to examine the THCIC, the bill would give lawmakers a clearer picture of the program's goals and methods. The Legislature would then have the opportunity to refocus the program on consumers, implement informed consent requirements, or abolish the program.

This bill could also help certain health care providers that find THCIC's data collection requirements costly and time-consuming. It is difficult for smaller providers to fund the substantial software and staffing costs needed to collect and manage the information. If after Sunset review the Legislature decided the program was not necessary or desirable, these providers would be relieved of a significant burden.

OPPONENTS SAY:

CSHB 1394 could hinder an important data collection service. Many hospitals, universities, and businesses value THCIC's information and often purchase their reports. The bill could impede commerce and research if, after Sunset review, the Legislature changed or eliminated this program.

The bill would take the unusual step of directing the Sunset Advisory Commission to examine a small, specific portion of an agency, and it is possible that this could be achieved without legislation. In addition, DSHS will undergo Sunset review during the next interim, which also would provide an opportunity to change or eliminate the THCIC program.

NOTES:

The committee substitute differs from the bill as filed by:

- requiring the Sunset commission to determine whether THCIC was collecting only necessary patient information, rather than requiring it to determine whether the identifiable patient information THCIC was maintaining was necessary to achieve its purposes; and
- requiring the Sunset commission to include their findings within the DSHS Sunset report, rather than requiring the commission to submit a report to the Legislature by December 31, 2014.

SUBJECT: Allowing modification of state jail felony record to Class A misdemeanor

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Herrero, Canales, Hughes, Leach, Moody

3 nays — Carter, Schaefer, Toth

1 absent — Burnam

WITNESSES: For — Caitlin Dunklee, Texas Criminal Justice Coalition; Marc Levin, Texas Public Policy Foundation; Sandra Martinez, Centex Family Solutions and Counseling; Arnold Patrick, Hidalgo County Adult Probation; Todd Jermstad; (*Registered, but did not testify*: Kristin Etter, Texas Criminal Defense Lawyers Association; Ana Yanez Correa and Travis Leete, The Texas Criminal Justice Coalition; Andrea Marsh, Texas Fair Defense Project; Jeanette Moll, Texas Public Policy Foundation; Matt Simpson, ACLU of Texas; Derek Muller; Tiffany Muller; Gabriela Rosas)

Against — (*Registered, but did not testify*: Brian Eppes,Tarrant County District Attorney's Office; Clifford Herberg, Bexar County Criminal District Attorney's Office; Justin Wood, Harris County District Attorney's Office)

On — Shannon Edmonds, Texas District and County Attorneys Office

BACKGROUND: State-jail felonies are criminal offenses punished by 180 days to two years in a state jail and an optional fine of up to $10,000. Class A misdemeanors are punished by up to one year in jail and/or a maximum fine of $4,000.

Under Code of Criminal Procedure (CCP), art. 42.12, after a criminal defendant has been convicted or pleaded guilty or nolo contendere, a judge may suspend the imposition of the sentence and place the defendant on community supervision, also called probation.

CCP art. 42.12, sec. 15 establishes procedures relating to community supervision for state jail felonies. For state jail felony offenses, the minimum probation term is two years and the maximum is five years, and

terms can be extended. Under CCP art. 42.12, sec. 20 community supervision terms can be reduced or terminated under certain conditions.

DIGEST:

CSHB 1790 would authorize judges, under certain circumstances, to modify an offender's record of conviction for certain eligible state jail felonies to reflect a conviction for a class A misdemeanor.

After probationers completed two-thirds of their original community supervision terms for eligible state jail felonies, judges would be required to review defendants' records and consider whether to modify them to reflect a conviction for a Class A misdemeanor, rather than a state jail felony. Judges would be required to dispose of cases as required by the current provisions in CCP art. 42.12, sec. 20, governing the reduction or termination of community supervision.

Upon discharge of a defendant, judges would be required to modify the convictions records to reflect a conviction for a Class A misdemeanor, instead of a state jail felony, if:

- the offense was not against a person listed in Penal Code Title 5, an offense involving family violence, improper sexual activity with an adult in custody at a correctional facility, driving while intoxicated with a child passenger, or failure to comply with a requirement of the sex offender registry;
- the defendant had satisfactorily fulfilled the conditions of community supervision, including paying restitution, and was not delinquent on fines, costs, and fees that the defendant had the ability to pay;
- the judge provided written notice of the right to request a hearing to the prosecutor and the defendant or defendant’s attorneys; and
- before the community supervision term ended, neither party requested a hearing or, after a hearing, the judge found that a modification of the record of conviction was in the best interests of justice.

Judges could not modify the name of the state jail felony offense for which the defendant was placed on community supervision. Defendants whose records were modified would not be considered to be convicted of a felony for any purpose other than the purposes of CCP sec. 20(a)(1), which states that proof of the conviction must be made known to the judge should a defendant again be convicted of a criminal offense.

A judge who placed a defendant on community supervision after conviction of a state jail felony would have to inform the defendant of the procedure for a modification of the order under this bill.

CSHB 1790 would take effect September 1, 2013, and would apply only to a defendant placed on probation on or after that date, regardless of when the offense took place.

SUPPORTERS SAY:

CSHB 1790 would give a narrow group of low-level, non-violent state jail offenders an incentive to agree to and then successfully complete probation terms. This would benefit the offenders, the state, and the public through reduced offender recidivism. Reduced recidivism would translate into increased public safety and savings for the state.

Currently, some state jail felons elect to be sentenced directly to state jail because community supervision can require more responsibility, accountability, and work. Sending offenders to a state jail instead of placing them on probation can be counterproductive for the state because offenders more often are successfully rehabilitated on probation. One measure of this is seen in the 31.1 percent recidivism rate for state jail offenders released in 2009, compared with 15.2 percent of offenders on active felony community supervision in 2009 having their probation revoked.

Better outcomes can occur on probation because state jails can be lacking in treatment, education, and rehabilitation programs, with the vast majority of offenders released from state jails with no post-release community supervision or support. In contrast, the probation system can provide better access to meaningful services and resources, such as employment support and substance abuse and mental health treatment while under the supervision of a probation officer.

Increased use of probation for state jail felons could save the state money and lead to the collection of more in restitution and fines. It costs about $43 per day to house an offender in a state jail, while the state pays, on average, about $1.40 per day for regular probationers. Probationers often are more successful in paying restitution than state jail felons, so victims might see more money under the bill. Total collections could be increased because the potential modification of a conviction would provide an incentive for offenders to pay restitution and fines.

Having a state jail felony offense modified to reflect a conviction for a Class A misdemeanor would help offenders overcome the barriers associated with felony offenses. These barriers can include difficulties getting a job or apartment, and reducing them would increase the likelihood of a successful reentry into society.

CSHB 1790 would apply only to a narrow group of appropriate offenders. The offense would have to be a state jail felony, the lowest level of non-violent felony offenses. While numerous crimes qualify as state jail offenses, serious incidents are punished at a higher level. The offender would have to have been put on probation for the state jail felony, and any person convicted of an eligible state jail felony could be sentenced to time in a state jail if appropriate. The bill specifically would not apply to offenders who commit certain crimes. These include all of the Penal Code Title 5 crimes against a person such as homicide, kidnapping, human trafficking, sex, and assaultive offenses. The bill also excludes offenders convicted of family violence, failing to register as a sex offender, and other serious offenses.

CSHB 1790 would not distort sentencing. No penalty established on the front end of a case would be changed, and any offender still could be sentenced to time in a state jail instead of probation. Modifications of convictions would never be a certainty, as they would occur after at least two-thirds of a successful probation term and only when the conditions in CSHB 1790 were met. Prosecutors would have a voice in the decision to modify a conviction because they could request a hearing on the issue and argue that a modification was not in the best interest of justice.

Rather than distort plea agreements, CSHB 1790 could facilitate them by giving prosecutors another tool to use when crafting them. Pleas to probation for state jail felonies could benefit both the state and offender because the potential modification to a misdemeanor could be held out as a carrot for successfully completing probation.

Judicial discretion would not be infringed upon because modifications would occur only if offenders were placed on probation, successful on probation, and then, following the current provisions for the reduction and termination of community supervision, a judge decided to discharge the offender. In addition, if a hearing were held on a modification under the bill, judges would have discretion in making the finding required by the

bill that the modification was in the best interest of justice.

CSHB 1790 would not cause confusion with criminal records nor distort sentencing for subsequent offenses. The bill states that a judge may not modify the name of the state jail felony offense for which a person was placed on community supervision. It also states that a state jail felon with a record modified to a misdemeanor would be considered to be convicted of a felony for the purposes of CCP sec. 20(a)(1), which states that proof of the conviction or guilty plea must be made known to the judge should a defendant again be convicted of a criminal offense. Under this, judges could be made aware that a Class A misdemeanor was modified from a state jail felony.

CSHB 1790 would not be an unconstitutional delegation of the executive branch's clemency authority. A recent attorney general's opinion (GA-1000) said that a court likely would conclude that a 2011 law allowing diligent participation credits for state jail inmates did not conflict with the state constitution's clemency provisions, and the same reasoning could apply to CSHB 1790.

A Utah law allowing felonies to be reduced to misdemeanors works well, and the same concept could work in Texas with CSHB 1790.

OPPONENTS SAY:

Allowing the modification of a criminal conviction from a felony to a misdemeanor would introduce confusion into state jail convictions and distort the current process in which a conviction is determined in the beginning, not the end, of a criminal case.

CSHB 1907 would give a judge too much authority to override the initial charging decision by the elected district attorney and the verdict of a jury and of another judge in cases in which a probation case has been transferred between courts. For example, under the bill, a judge could modify a conviction so that a jury's conviction on a state jail felony offense would not be the level of offense in the offender's record of conviction. This could result in confusion when examining criminal history records.

CSHB 1907 would apply to a broad group of state jail felony offenses, many of which it may be inappropriate to reduce to Class A misdemeanors. For example, types of arson, theft, and burglary of a building are state jail felonies.

Allowing convictions to be modified could distort sentencing and plea agreements. Judges and juries may be reluctant to sentence an offender to probation for a state jail felony if the result could be a modification of the record. Prosecutors could be reluctant to enter in plea agreements for the same reason.

CSHB 1790 would reduce judicial discretion in handling state jail probationers. The bill would require judges to take certain actions, including reviewing a case after a certain period of time and requiring the judge to modify records of conviction under certain circumstances.

It is unclear what effect CSHB 1790 would have on laws allowing previous offenses to be used to enhance a punishment for subsequent offenses. For example, if a state jail felony drug offense were modified to be a Class A misdemeanor and was not counted as a previous felony offense, second and subsequent offenses could end up being treated like first offenses.

CSHB 1790 could raise questions about whether a modification of a conviction record would be an unconstitutional delegation of the executive branch's clemency authority to the judicial branch.

A similar law in Utah should not be the model for Texas because of significant differences between the two states' criminal justice systems.

NOTES:

The committee substitute differed from the bill as filed in several ways, including changing the time frame for when a case would be reviewed by a judge and making additional offenses ineligible for a modification.

SUBJECT: Banning carbon monoxide to euthanize dogs or cats

COMMITTEE: Environmental Regulation — favorable, without amendment

VOTE: 9 ayes — Harless, Márquez, Isaac, Kacal, Lewis, Reynolds, E. Thompson, Chris Turner, Villalba

0 nays

WITNESSES: For — Karl Bailey, City of Seagoville; Shelby Bobosky, Texas Humane Legislation Network; Katie Broaddus, Association of Shelter Veterinarians; Audrey Moses; Ethel Strother, Texas Animal Control Association; (*Registered, but did not testify*: George Armstrong, Responsible Pet Owners Alliance; Nita Batra; Diane Coker; Kathy Davis, City of San Antonio; Kelley Dwyer; Deborah Foote, American Society for the Prevention of Cruelty to Animals; Kelly Hanes, Austin Humane Society; Katie Jarl, Humane Society of the United States; Eric Knustrom; Denise Lehe; Amy Mitchell; Patt Nordyke, Texas Federation of Animal Care Societies; Jeanne O'Neil; Daniel Randall; Joan Randall; Stacy Sutton Kerby, Robert Skip Trimble, Texas Humane Legislation Network; Rebecca Whitehouse)

Against — None

On — Tamra Walthall; (*Registered, but did not testify:* Tom Sidwa, Texas Department of State Health Services)

BACKGROUND: Health and Safety Code, ch. 821, subch. C allows animal shelters to euthanize a dog or cat by administering sodium pentobarbital or commercially compressed carbon monoxide in a chamber.

DIGEST: HB 858 would remove the use of carbon monoxide to euthanize dogs and cats starting January 1, 2014.

HB 858 would make conforming changes to Health and Safety Code, sec. 821.054 on requirements for the use of commercially compressed carbon monoxide to reflect that the section no longer applied to dogs and cats. The bill also would change the Health and Safety Code, sec. 821.051 to reflect the current organizational structure of the Health and Human

Services Commission (HHSC).

HB 858 would require the executive commissioner of the HHSC to adopt rules conforming to the act no later than December 1, 2013.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

HB 858 would end the inhumane practice of euthanizing animals with compressed carbon monoxide. Euthanizing animals with compressed carbon monoxide can take up to 30 minutes, while the alternative, an injection of sodium pentobarbital results in a quick, humane death. Sodium pentobarbital results in the loss of consciousness within 3 to 5 seconds and death within 2 to 5 minutes.

Only 29 cities in Texas still use compressed carbon monoxide, often in gas chambers that do not meet Texas' existing regulations and that often do not work properly and are dangerous to operate. HB 858 would give these shelters until January 1, 2014 to come into compliance.

Despite arguments to the contrary, the use of sodium pentobarbital is less expensive than using compressed carbon monoxide. A sodium pentobarbital injection costs about $2.30. Euthanizing an animal in a properly constructed and monitored gas chamber with one operator costs about $2.70. If the animal is humanely tranquilized before being put into the gas chamber, the cost rises to about $4.65. Opponents who argue that carbon monoxide is less expensive are likely referring to operations that are in violation of Texas regulations governing the use of compressed carbon monoxide. The fact that over time the number of facilities using compressed carbon monoxide has decreased dramatically speaks to the true cost differential of the two methods.

HB 858 would bring Texas' practice of euthanizing cats and dogs in line with 16 other states, including Florida, Illinois, and New York.

Despite claims that carbon monoxide is a safer way for people to euthanize wild animals, vets and animal control workers are trained and regularly safely handle, sedate, and administer drugs to feral cats and other wild animals.

OPPONENTS SAY:

A number of animal shelters in the state, primarily in small cities and counties, still use compressed carbon monoxide. Supporters are likely underestimating the number of shelters that use compressed carbon monoxide. HB 858 would have a large effect on those cities.

Shelters using the proper equipment and following existing rules can euthanize animals using carbon monoxide in a humane manner. Despite supporters' claims, a properly operated carbon monoxide chamber will render an animal unconscious in less than 10 seconds.

HB 858 would mandate a costly transition from an existing technology to sodium pentobarbital, an expense that small communities cannot afford. For example, one employee can safely operate a compressed carbon monoxide chamber, while it typically takes two employees to administer sodium pentobarbital.

HB 858 would remove one of the two state's legally permissible and humane ways to euthanize dogs and cats. The bill would make all animal shelters subject to the risk of an interruption in the supply of sodium pentobarbital; such disruptions of drugs are not uncommon. This could lead to rapidly filling shelters, with facilities having no place to shelter stray and dangerous animals.

Euthanasia by carbon monoxide may be a better method for some animals, such as wild and aggressive animals. Using carbon monoxide does not require a human to hold animals during the euthanasia process, thus lessening the possibility of bites and other harm to employees.

NOTES:

The identical companion, SB 360, passed the Senate by a vote of 30-0 on March 27 and was reported favorably from the House Environmental Regulation Committee on April 9.

SUBJECT: Texas Animal Health Commission's animal ID program

COMMITTEE: Agriculture and Livestock — committee substitute recommended

VOTE: 5 ayes — T. King, Anderson, M. González, Kacal, Springer

0 nays

2 absent — Kleinschmidt, White

WITNESSES: For — Marida Favia del Core Borromeo, Exotic Wildlife Association; Jason Skaggs, Texas and Southwestern Cattle Raisers Association; Josh Winegarner, Texas Cattle Feeders Association; (*Registered, but did not testify:* Norman Garza Jr, Texas Farm Bureau; James Grimm, Texas Poultry Federation; Rick Hardcastle; Joe Morris, Texas Sheep and Goat Raisers Association; Darren Turley, Texas Association of Dairymen; Bob Turner, Independent Cattlemen of Texas and Texas Poultry Federation; Don Ward, Livestock Marketing Association of Texas; Josh Winegarner; Texas Cattle Feeders Association)

Against — Elizabeth Choate, Texas Veterinary Medical Association; Judith McGeary, Farm and Ranch Freedom Alliance; (*Registered, but did not testify:* Susan Beckwith, Texas Organic Farmers and Gardeners Association; Ronda Rutledge, Sustainable Food Center; James Wygant, Farm and Ranch Freedom Alliance; Patrick Fitzsimons; Carla Jenkins; Kelley Masters; Suzanne Santos; Roxanna Smock; Lori Teller)

On — Dee Ellis, Texas Animal Health Commission

BACKGROUND: Adopted in 2005, Agriculture Code, sec. 161.056, authorizes the Texas Animal Health Commission (TAHC) to implement an animal identification program consistent with the U.S. Department of Agriculture's (USDA's) National Animal Identification System (NAIS). The USDA withdrew the NAIS program in 2009, making section 161.056 defunct. At this time, the TAHC can only impose animal identification requirements that are connected to a disease control program.

DIGEST: CSHB 2311 would strike the statutory reference to the U.S. Department of Agriculture's National Animal Identification System and provide that any

state animal identification program could be no more stringent than any federal animal identification program.

The Animal Health Commission (TAHC) could, by a two-thirds vote, adopt rules to provide for a more stringent animal identification program for control of a specific animal disease or for animal emergency management.

The TAHC could adopt rules to require the use of official identification as part of the animal identification program for animal disease control or animal emergency management.

CSHB 2311 also would provide that all existing TAHC animal identification rules would continue in effect until they were amended or repealed.

The bill would remove language allowing the Animal Health Commission to establish a date for all premises to be registered and assess a registration fee.

CSHB 2311 would repeal the penalty provision for violations relating to animal identification, which is class C misdemeanor (maximum fine of $500) or, if previously convicted, a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000). The bill also would repeal the provision detailing what could be recognized as official identification numbers in the state.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 2311 would clean up a defunct statute and clarify the existing authority of the Texas Animal Health Commission's (TAHC) as it relates to animal identification to ensure that there was proper balance between animal disease traceability and continued commerce. The bill also would prevent the adoption of stringent rules without the support of a large majority of the TAHC.

Animal disease traceability is a vital component to the success of the Texas livestock industry. Texas animal health officers must be able to track potential diseased animals quickly and efficiently and in a way that

is practical and affordable for Texas livestock producers. In recent years, the Texas livestock industry has placed a renewed emphasis on controlling foreign animal diseases of concern. Intrastate and interstate animal identification plans recently have been developed and implemented at the federal and state levels to enable the livestock industry and animal health officials to more rapidly and effectively respond to animal health emergencies.

With input from many stakeholders, the committee substitute would strike a good compromise that balanced animal health and public health protection with the interests of the producers who contribute to the state's economy. It would address concerns about the state program being less stringent than the federal program by providing the TAHC with the flexibility to adopt more stringent animal identification rules with a two-thirds vote. This would preserve the TAHC's ability to take action to mitigate a foreign or domestic animal disease emergency.

Opponents' concerns that the bill would require the tagging of backyard chickens and other animals of small-scale farmers are overblown. The scope of the bill is narrow and would limit the TAHC to creating identification rules only for the purpose of disease control. The bill would not write any identification rules into statute concerning any species of livestock. In fact, a vote of two-thirds of the commission would set a higher burden under which identification rules could be adopted. Further, various livestock industries are represented by the TAHC and all rules adopted by must go through a period of open public comment. Plenty of existing checks and balances would ensure that one group was not inadvertently harmed when decisions were made regarding how animal identification and disease control will be handled in the state.

Limiting the bill to cattle identification programs or providing a direct-to-slaughter exemption could create inconsistencies and limit TAHC's ability to create rules protecting certain sectors of the industry.

OPPONENTS SAY:

Requiring Texas' animal identification program to be no more stringent than the federal animal identification program would put Texas in a position to be reactive to federal standards rather than proactive to the needs of the state. This would cause uncertainty for both the Texas Animal Health Commission (TAHC) and the industry and could prevent the early detection and rapid response to any outbreaks that may occur.

The ability of the state of Texas to mitigate the spread of animal diseases that could potentially devastate animal health and ultimately the state's livestock economy is of paramount importance. The TAHC needs the statutory authority to implement a meaningful animal disease traceability system that would allow quick control of animal movements and quarantine of infected animals to halt the spread of disease.

Authorizing the TAHC to adopt federal animal identification regulations would be inappropriate since we do not know what regulations may be adopted in the future. Texas should work closely with the USDA in their disease control initiatives but should also preserve the ability to take a leadership role in animal health when necessary.

OTHER OPPONENTS SAY:

While CSHB 2311 appears to limit the Texas Animal Health Commission's (TAHC's) authority, the bill would actually do the opposite. CSHB 2311 would allow the TAHC to adopt animal identification rules in-state as long as they were not more stringent than federal regulations and would allow the agency to adopt even more stringent regulations with a two-thirds vote. The bill also would grandfather all of the agency's existing regulations, including those that exceed the agency's current statutory authority.

The bill would allow the TAHC to impose federal regulations — intended only to apply to those moving animals across state lines — on people who own and move animals entirely within the state. This would affect people who own any type of poultry or livestock animal, even just a few chickens in their backyard, a pet pig, or a horse, as well as thousands of small farmers and ranchers across the state.

Without the National Animal Identification System, the TAHC does not have authority to require tagging of an animal for identification purposes that is not connected to a disease control program. This bill would give the agency authority to adopt federal regulations for animal tagging and apply them in-state. Small-scale farmers and backyard poultry farmers that don't frequently cross state lines could be subject to tagging requirements for simply moving their animals within the state.

The TAHC already has authority to address animal diseases, and it can require identification as part of a disease control program. There is no need to give the agency authority to adopt stand-alone animal identification requirements, unconnected to any disease control program,

for in-state movements. The bill should be limited to cattle identification programs only and provide for a direct-to-slaughter exemption.

NOTES:

The companion bill, SB 1233 by Schwertner, was reported favorably as substituted by the Senate Committee on Agriculture, Rural Affairs, and Homeland Security on April 11.

The committee substitute differs from the bill as filed by:

- including a provision to allow the TAHC to adopt more stringent animal identification rules with a two-thirds vote;
- providing that all existing TAHC animal identification rules would continue in effect until they were amended or repealed; and
- removing references to the brucellosis program.